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DEPARTMENT OF JUSTICE

CPCLO Order No. 004-2019

Privacy Act of 1974; Systems of Records

AGENCY: United States Department of Justice, Executive Office for Immigration Review

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, and Office of Management and Budget (OMB) Circular No. A-108, notice is hereby given that the Executive Office for Immigration Review (EOIR), a component within the United States Department of Justice (DOJ or Department), proposes to develop a new system of records titled Office of the Chief Administrative Hearing Officer (OCAHO) Case Management System (CMS), JUSTICE/EOIR-002. The EOIR proposes to establish this system of records to track and manage case information and documents for OCAHO cases. The system provides an electronic platform to track cases and electronically maintain records previously maintained in paper form for the purpose of more efficiently managing these records and providing better access to the records for parties to the proceedings.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this system of records will begin operation on the publication date, subject to a 30-day period in which to comment on the routine uses, described below. Please submit any comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The public, OMB, and Congress are invited to submit any comments to the United States Department of Justice, Office of Privacy and Civil Liberties, ATTN:

Privacy Analyst, 145 N Street, NE, Suite 8W.300, Washington, DC 20530, or by facsimile at 202-307-0693, or e-mail at privacy.compliance@usdoj.gov. To ensure proper handling, please reference the above CPCLO Order No. on your correspondence.

FOR FURTHER INFORMATION CONTACT: Marta Rothwarf and Michelle Curry, Associate General Counsels and Co-Senior Component Officials for Privacy, Office of the General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, by e-mail at marta.rothwarf2@usdoj.gov and michelle.curry@usdoj.gov, or by facsimile at 703-305-0443.

SUPPLEMENTARY INFORMATION:

EOIR proposes to establish a new system of records subject to the Privacy Act of 1974, 5 U.S.C. 552a. The proposed system of records will be used by OCAHO to facilitate adjudication of its cases, track and manage cases and records, consisting of paper and electronic files maintained by OCAHO. The records to be maintained in this new system historically have been included as part of EOIR-001, Records and Management Information System. They are being transferred into this new system to improve efficiency, improve records management practices, and provide more convenient access for parties to proceedings.

OCAHO Administrative Law Judges (ALJs) hear cases and adjudicate issues arising under the provisions of the Immigration and Nationality Act (INA) relating to: (1) knowingly hiring, recruiting or referring for a fee, or continuing to employ unauthorized aliens, failure to comply with employment eligibility verification requirements, and requiring indemnity bonds from employees in violation of section 274A of the INA (8 U.S.C. 1324a); (2) immigration-related unfair employment practices

in violation of section 274B of the INA (8 U.S.C. 1324b); and (3) immigration-related document fraud in violation of section 274C of the INA (8 U.S.C. 1324c).

Complaints under sections 274A and 274C of the INA are filed by the U.S. Department of Homeland Security, Immigration and Customs Enforcement. Complaints under section 274B of the INA may be filed by private individuals or entities, or by the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section. The respondents in the cases handled by OCAHO are typically businesses or employers. The parties to 274A and 274C cases may seek administrative review of ALJ decisions and orders by the Chief Administrative Hearing Officer (CAHO). Parties in all OCAHO cases may appeal final agency orders to the appropriate United States Circuit Court of Appeals.

In connection with the cases and appeals handled by OCAHO, it collects certain information and documents from and about complainants and respondents. The Immigrant and Employee Rights Section (DOJ/CRT) and Immigration and Customs Enforcement (DHS), which file complaints with OCAHO, often will submit investigatory records as exhibits or attachments to their filings. These investigatory records may include notices of inspection, summaries of inspection results, affidavits or memoranda from investigators, results from searches of internal agency databases, and other records related to their investigations. The exhibits or attachments then become part of OCAHO's official case record. As a result, these investigatory records may be exempt from access or amendment rights.

To improve tracking and storage of case-related information and documents, OCAHO is implementing a new electronic case management system (CMS). The

OCAHO CMS will manage the entire life cycle of OCAHO's case processes, including: (1) tracking and managing case information and documents from complaint through adjudication, review, and when applicable, appeal; (2) facilitating case research; (3) and reporting on key business functions and metrics. The OCAHO CMS includes an electronic filing capability, which will enable parties to submit case information and documents electronically through a secure web-based portal. The portal will also provide notifications and updates on case status to system users, and will allow authorized parties to a proceeding to access copies of case-related documents electronically. The system contains templates to generate letters, notices, and decisions used in the OCAHO adjudicatory process, and the system generates reports by case status and disposition.

Information from the system may be shared pursuant to the requirements of the Privacy Act and, in the case of its routine uses, when the disclosure is compatible with the purpose for which the information was collected. The system is segregated by "need to know" user controls, and allows authorized users to track various stages of the proceedings.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress on this new system of records.

Dated: August 7, 2019.

Peter A. Winn
Acting Chief Privacy and Civil Liberties Officer
United States Department of Justice

JUSTICE/EOIR-002**SYSTEM NAME AND NUMBER:**

EOIR-002, Office of the Chief Administrative Hearing Officer (OCAHO) Case Management System (CMS).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Information Technology, 5109 Leesburg Pike, Suite 900, Falls Church, VA 22041 and EOIR OCAHO, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041.

SYSTEM MANAGER(S):

EOIR Chief Information Officer, Office of Information Technology, 5109 Leesburg Pike, Suite 900, Falls Church, VA 22041 and EOIR OCAHO, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1324a; 8 U.S.C. 1324b; 8 U.S.C. 1324c; 28 CFR Part 68 and 8 CFR 1003.0.

PURPOSE(S) OF THE SYSTEM:

The system will manage the entire life cycle of OCAHO's case processes, reviews and appeals, from the filing of complaints through adjudication, review, and when applicable, appeals, including tracking, managing, and storing all case-related information and documents, facilitating case research, and reporting and creating statistics on key business functions and metrics. The scope of the system of records, as

proposed, is commensurate with the purpose(s) of the system because the records collected are limited to those necessary to exercise actions required for the adjudication and review of cases by OCAHO.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system will include information pertaining to individuals who appear as complainants or respondents in OCAHO cases, other individuals directly or indirectly involved in these proceedings, including investigators, witnesses, and others involved with the business in question, adjudicators such as the ALJs, the CAHO, OCAHO personnel as necessary, as well as individuals who appear as attorneys or representatives for complainants or respondents in OCAHO cases.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains paper and electronic case-related information for the following categories of records: complaints; petitions for review; answers and responses; subpoenas; motions, requests, and briefs; exhibits and other supporting documentation; investigatory records, including, but not limited to, notices of inspection, summaries of inspection results, affidavits or memoranda from investigators, and results from searches of internal agency databases; and notices, orders, and decisions issued by OCAHO ALJs and the CAHO. Records maintained within the system may include: CAHO and adjudicator names and electronic signatures; the parties' full names; addresses; phone numbers; e-mail addresses; business and employment records (including copies of Employment Eligibility Verification Forms (Forms I-9) that may contain social security numbers, payroll records, and other similar records); electronic signatures; and, in some cases, information about an individual complainant's citizenship or immigration status.

In order to register and create an account to use the web-based portal, individuals will be asked to provide their first and last name, the office or agency that they are associated with (if applicable), their e-mail address, and a user-chosen password.

RECORD SOURCE CATEGORIES:

Records contained within the system may be submitted by the parties to OCAHO cases and/or their attorneys or representatives or may be generated by the courts and court personnel. Parties may include individuals, businesses or non-profit entities, and Federal Government agencies (Immigration and Customs Enforcement in the Department of Homeland Security, and the Immigrant and Employee Rights Section in the Civil Rights Division of the Department of Justice).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system of records may be disclosed as a routine use pursuant to 5 U.S.C. 552a(b)(3) under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purposes for which the information was collected:

1. Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law – criminal, civil, or regulatory in nature – the relevant records may be referred to the appropriate federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or

prosecuting such violation or charged with enforcing or implementing such law.

2. To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.
3. To any person or entity that EOIR/OCAHO has reason to believe possesses information regarding a matter within the jurisdiction of EOIR/OCAHO, to the extent deemed to be necessary by EOIR/OCAHO in order to elicit such information or cooperation from the recipient for use in the performance of an EOIR/OCAHO authorized activity.
4. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.
5. To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or informal discovery proceedings.
6. To the news media and the public, including disclosures pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

7. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.
8. To designated officers and employees of state, local, territorial, or tribal law enforcement or detention agencies in connection with the hiring or continued employment of an employee or contractor, where the employee or contractor would occupy or occupies a position of public trust as a law enforcement officer or detention officer having direct contact with the public or with prisoners or detainees, to the extent that the information is relevant and necessary to the recipient agency's decision.
9. To appropriate officials and employees of a Federal agency or entity that requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the assignment, detail, or deployment of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract, or the issuance of a grant or benefit.
10. To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires

information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

11. To Federal, state, local, territorial, tribal, foreign, or international licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit.
12. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.
13. To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.
14. To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that there has been a breach of the system of records, (2) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department (including its information systems, programs, and operations), the Federal Government, or national security, and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.
15. To another Federal agency or Federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed

breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

16. To any agency, organization, or individual for the purpose of performing authorized audit or oversight operations of the Department/EOIR and meeting related reporting requirements.
17. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.
18. To Federal agencies involved in statistical analysis of data, and publication and/or reporting of aggregated or de-identified information designed to improve the efficiency and effectiveness of immigration proceedings at those agencies or to better meet EOIR's mission of adjudicating cases fairly and expeditiously, and uniformly interpreting and administering the Nation's immigration laws.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper copies of records are maintained in file folders in secure locations.

Electronic records are stored on secure servers and storage media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Authorized internal users may retrieve paper records through OCAHO case numbers and electronic records through an internet portal that will allow searches by a party's name, OCAHO case number, region, city and state, or fiscal or calendar year.

External users granted access because they are a party or authorized representative of a

party will be able to retrieve records related to the cases in which they are involved by party name or case number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Paper and electronic records will be retained and disposed of in accordance with OCAHO's revised records retention schedule, DAA-0582-2017-0005, currently under review by NARA.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

DOJ/EOIR/OCAHO will implement administrative, technical, and physical safeguards to protect information in the system. For example, internet connections are protected by multiple firewalls, and security personnel conduct periodic vulnerability scans using DOJ-approved software to ensure security compliance. Security logs are enabled for computers to assist in troubleshooting and forensic analysis during incident investigations. Need-to-know access is provided and verified by Personal Identity Verification (PIV) access which requires a valid user identification and password. Electronic records are segregated and stored in secure cloud-based redundant server locations. Paper records are segregated and stored in secure locations with locked cabinets. Both paper and electronic records are accessible only to those with a need to access the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

All requests for access to records must be in writing and should be addressed to the Senior Component Official for Privacy at the EOIR Office of the General Counsel,

5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, or doj.eoirogc@usdoj.gov.

The envelope and letter should be clearly marked “Privacy Act Access Request.” The request must describe the records sought in sufficient detail to enable Department personnel to locate them with a reasonable amount of effort. The request must include a general description of the records sought and must include the requester’s full name, current address, and date and place of birth, to enable EOIR to verify that the requester is legally authorized to access the records.

The request must be signed and either notarized or submitted under penalty of perjury. Some information may be exempt from the access provisions as described in the “EXEMPTIONS CLAIMED FOR THE SYSTEM” section, below. An individual who is the subject of a record in this system of records may access those records that are not exempt from access. A determination whether a record may be accessed will be made at the time a request is received.

Although no specific form is required, you may obtain forms for this purpose from the FOIA/Privacy Act Mail Referral Unit, United States Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530, or on the Department of Justice Web site at <http://www.justice.gov/oip/oip-request.html>.

More information regarding the Department’s procedures for accessing records in accordance with the Privacy Act can be found at 28 CFR part 16 subpart D, “Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974.”

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend records maintained in this system of records must direct their requests to the address indicated in the “RECORD ACCESS

PROCEDURES” section, above. All requests to contest or amend records must be in writing and the envelope and letter should be clearly marked “Privacy Act Amendment Request.” All requests must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record. Some information may be exempt from the amendment provisions as described in the “EXEMPTIONS PROMULGATED FOR THE SYSTEM” section, below. An individual who is the subject of a record in this system of records may contest or amend those records that are not exempt. A determination of whether a record is exempt from the amendment provisions will be made after a request is received.

More information regarding the Department’s procedures for amending or contesting records in accordance with the Privacy Act can be found at 28 CFR 16.46, “Requests for Amendment or Correction of Records.”

NOTIFICATION PROCEDURES:

Individuals may be notified if a record in this system of records pertains to them when the individuals request information utilizing the same procedures as those identified in the “RECORD ACCESS PROCEDURES” section, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections 5 U.S.C. 552a(d) of the Privacy Act pursuant to 5 U.S.C. 552a(k) subsections. The exemptions will be applied only to the extent that the information in the system is subject to exemption pursuant to 5 U.S.C. 552a(k) subsections. Rules are in the process of being promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e), and are in the process of being published in the Federal Register.

HISTORY:

This system was previously part of EOIR-001 Records and Management Information System, 60 FR 52694 (Oct. 10, 1995); 66 FR 35458 (July 5, 2001); 69 FR 26179 (May 11, 2004); 72 FR 3410 (Jan. 25, 2007) (rescinded by 82 FR 24147); 82 FR 24147 (May 25, 2017).
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